

Department of Veterans Affairs

§ 21.3040

notwithstanding that the Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

(3) *Election.* An election of Office of Workers' Compensation Programs benefits, under the Federal employees' Compensation Act (FECA), by or for a child filed on or after July 4, 1966, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility. An election of Office of Workers' Compensation Programs benefits under the Federal Employees' Compensation Act (FECA) by a surviving spouse filed on or after December 1, 1968, is a bar to subsequent payments of Department of Veterans Affairs benefits during the period of concurrent eligibility.

(b) *Military service.* The provisions of this paragraph are applicable to cases where there is eligibility for benefits from Office of Workers' Compensation Program, under the Federal Employee's Compensation Act (FECA) based on the disability or death as a result of military service by the veteran from whom eligibility for educational assistance is derived.

(1) *Child, spouse or surviving spouse.* A person who is eligible for educational assistance and is also eligible for Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) must elect which benefit he or she will receive. The election may be made at any time.

(2) *Veteran, spouse and child—surviving spouse and child.* An eligible person may receive educational assistance notwithstanding that the Office of Workers' Compensation Programs benefits, under the Federal Employees' Compensation Act (FECA) are being paid to a veteran, or surviving spouse.

CROSS REFERENCE: *Federal Employees' Compensation.* See § 3.708 of this chapter.

[40 FR 42879, Sept. 17, 1975, as amended at 50 FR 27826, July 8, 1985]

§ 21.3025 Nonduplication; Federal programs.

Payment of subsistence allowance and special training allowance is prohibited to an otherwise eligible person—

(a) Who is on active duty and is pursuing a course of education which is being paid for by the Armed Forces (or by the Department of Health and Human Services in the case of the Public Health Service); or

(b) For a unit course or courses which are being paid for under 5 U.S.C. chapter 41.

(Authority: 38 U.S.C. 3681(a))

[61 FR 26108, May 24, 1996]

CLAIMS

§ 21.3030 Claims.

The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)

[64 FR 23772, May 4, 1999]

ELIGIBILITY AND ENTITLEMENT

§ 21.3040 Eligibility; child.

(a) *Commencement.* A program of education or special restorative training may not be afforded prior to the eligible person's 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed:

(1) Compulsory school attendance age under State law; or

(2) His or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training.

(b) *Secondary schooling.* Completion of secondary schooling means completion of a curriculum offered by a public or private school which satisfies the requirements for a high school diploma or its equivalent—usually completion of the 12th grade in the public school system.

(c) *Age limitation for commencement.* No person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before

§ 21.3041

38 CFR Ch. I (7–1–13 Edition)

the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces on whose service eligibility is claimed as being in one of the missing status categories of § 21.3021 (a)(1)(iv) and (3)(ii).

(d) *Termination of eligibility.* No person is eligible for educational assistance beyond his or her 31st birthday, except as provided under § 21.3041(g)(2). In no event may educational assistance be provided after the period of entitlement has been exhausted. In an exceptional case special restorative training may be provided in excess of 45 months. See § 21.3300.

(Authority: 38 U.S.C. 3512(a))

[30 FR 15632, Dec. 18, 1965, as amended at 34 FR 842, Jan. 18, 1969; 39 FR 38227, Oct. 30, 1974; 40 FR 42879, Sept. 17, 1975; 41 FR 47929, Nov. 1, 1976; 43 FR 35290, Aug. 9, 1978; 73 FR 30489, May 28, 2008]

§ 21.3041 Periods of eligibility; child.

(a) *Eligibility derived from a veteran with a P&T disability.* An eligible child's period of eligibility generally begins on the child's 18th birthday, or on the successful completion of the child's secondary schooling, whichever first occurs. The period of eligibility generally ends on the earlier of the date of the child's 26th birthday or the date the veteran is no longer P&T disabled. VA will extend an eligible child's period of eligibility for the reasons listed in paragraphs (g) and (h) of this section. See paragraph (c) of this section if the child serves on duty in the Armed Forces as an eligible child after his or her 18th birthday and before his or her 26th birthday. If the veteran dies while the P&T rating is in effect and before the eligible child's 26th birthday, see paragraph (b) of this section to determine the new period of eligibility. Exceptions to this general period of eligibility are as follows:

(1) *Period of eligibility may begin before the child's 18th birthday.* The period of eligibility may begin before the eligible child's 18th birthday for one of the reasons in paragraphs (a)(1)(i), (ii), or (iii) of this section. The period of eligibility ends on the earlier of the date the veteran is no longer rated P&T disabled or the date of the child's 26th

birthday. See § 21.3135(h) if the veteran is no longer rated P&T disabled.

(i) The child completed compulsory school attendance under applicable State law (see § 21.3040(a) and (b));

(ii) The child is pursuing a course designed to prepare him or her for an examination required or used for entrance into an institution of higher education or a graduate school; or

(iii) The child is beyond his or her 14th birthday and has a physical or mental handicap (see § 21.3040(a)).

(Authority 38 U.S.C. 3512(a))

(2) *Period of eligibility may begin after the child's 18th birthday.* A child's period of eligibility may begin after his or her 18th birthday if VA first finds the veteran has a P&T disability after the child's 18th birthday but before the child's 26th birthday. See paragraph (e) of this section if an adopted child becomes eligible through qualifying as the veteran's child after VA first finds the veteran has a P&T disability. See paragraph (f) of this section if a step-child becomes eligible through qualifying as the veteran's child after VA first finds the veteran is P&T disabled.

(i) *Beginning date if the effective date of the initial P&T rating is before the child's 18th birthday and notification to the veteran occurs after the child's 18th birthday and before his or her 26th birthday.* If the effective date of the P&T rating is before the child's 18th birthday, and the date of notification to the veteran occurs after the child's 18th birthday but before the child's 26th birthday, the child may elect the beginning date of his or her period of eligibility. (See paragraph (i) of this section for election requirements.) If the child elects a beginning date that is before his or her 18th birthday, the period of eligibility ends the earlier of the date that the veteran is no longer rated P&T disabled, or the date of the child's 26th birthday. If the child elects a beginning date after his or her 18th birthday, the period of eligibility ends the earlier of the date the veteran is no longer rated P&T disabled or 8 years after the beginning date the child elects. (See § 21.3135(h) if the veteran is no longer rated P&T disabled.) The child can elect as a beginning date either—